

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
JEFFERSON RIVER BASIN (41G)
PRELIMINARY DECREE

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CLAIMANT: 105 Trails End Lane LLC

OBJECTORS: 105 Trails End Lane LLC; Brennan BB
Ranch LLC

NOTICE OF INTENT TO APPEAR: BFR Family Limited
Partnership LLLP

CASE 41G-0399-R-2021
41G 197157-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41G 197157-00 was consolidated into Case 41G-0399-R-2021 to address the objections it received during the Basin 41G objection period. Claim 41G 197157-00 is owned by 105 Trails End Lane LLC (Trails End). It received an objection from Trails End and Brennan BB Ranch, LLC (Brennan), and a notice of intent to appear from BFR Family Limited Partnership LLLP (BFR).

2. On September 24, 2021, Trails End filed a Notice of Settlement Agreement indicating that it had reached a settlement agreement with Objector Brennan. The settlement agreement states that Brennan “agrees to withdraw all objections... it filed on the Trails End’s water rights in the adjudication of the Preliminary Decree of Basin 41G, the Jefferson River Basin.”

3. On January 6, 2023, BFR and Trails End filed a Stipulation resolving the remaining issues in this case. On February 16, 2023, Trails End filed a Motion and Brief in Support of the Stipulation that provides sufficient evidence to overcome the prima facie status of claim 41G 197157-00.

4. The parties agree that the place of use for claim 41G 197157-00 should be increased from 85 acres to 207 acres. In support, Trails End attaches the affidavit of Kyle Mace to its February 16, 2023 filing. Kyle Mace works for WGM Group and provides his review of claim 41G 197157-00.

Mace indicates that he reviewed aerial photos from 1947, 1972, 1980, and 1981. Based on his analysis of the four aerial photos, Mace believes that 207 acres were historically irrigated under claim 41G 197157-00. Maps attached to Mace’s report depict historical irrigation and reflect the requested modifications to place of use.

Mace explains that he also reviewed the Water Resource Survey Notes for the subject property from June 6, 1953. The Notes state that there were 124 acres being irrigated with another 94 irrigable acres. The evidence provided by Trails End supports the requested modification to the place of use for claim 41G 197157-00.

14. The parties agree the period of diversion and period of use for claim 41G 197157-00 should be modified from May 1 – July 15 to March 15 – October 30. In

support, the sworn statement of Tim Stephens is attached to Trails End's February 16, 2023 filing. Stephens is the ranch manager of the property owned by Trails End. He and his wife have managed to the property for 26 years. It is his understanding that the practices in the past 26 years also reflects the irrigation of the property prior to 1973. Stephens provides that irrigation on the property has historically occurred between March 15 and October 30.

15. Claim 197157-00 received a DNRC issue remark stating:

DITCH NAME WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The issue remark has provided the necessary notice and the issue remark should be removed.

CONCLUSIONS OF LAW

1. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

Trails End presented sufficient evidence to overcome the prima facie status of claim 41G 197157-00. The evidence supports modifying the place of use, the period of use, and the period of diversion as requested in the Stipulation.

2. Settlement agreements are subject to review and approval of the Water Court. Rule 17(a), W.R.Adj.R. The settlement documentation in this Case should be accepted by the Court.

3. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

The issue remark appearing on claim 41G 197157-00 is a notice-only issue remark. It does not overcome the prima facie status of the claim and it should be removed from the water right abstract.

RECOMMENDATIONS

1. Claim 41G 197157-00 should be modified as provided above.
2. The issue remark should be removed from claim 41G 197157-00.

A Post Decree Abstract of Water Right Claim is served with the Report to confirm that the recommended modifications have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via Electronic Mail:

Ryan McLane
FRANZ & DRISCOLL, PLLP
PO Box 1155
Helena, MT 59624-1155
(406) 442-0005
Ryan@franzdriscoll.com
Office@franzdriscoll.com

Dana E. Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771
(406) 599-7424
office@riverandrangelaw.com
dana@riverandrangelaw.com
bina@riverandrangelaw.com

Service via Electronic Mail:

Colleen Coyle
Coyle Law Firm
PO Box 1326
Bozeman, MT 59771
(406) 551-4868
colleen@coylelawmt.com

Rick Tappan
Tappan Law Firm, PLLC
7 W 6TH Ave. STE 516
Helena, MT 59601-5036
(406) 449-3383
rctappan@tappanlawfirm.com
jpharmer@tappanlawfirm.com

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
JEFFERSON RIVER
BASIN 41G**

Water Right Number: 41G 197157-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: 105 TRAILS END LANE LLC
4627 FAIRFIELD DR
CORONA DEL MAR, CA 92625

Priority Date: MARCH 5, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 3.22 CFS

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 207.00

Source Name: CAMP CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWSWSW	33	2S	2W	MADISON

Period of Diversion: MARCH 15 TO OCTOBER 30

Diversion Means: HEADGATE

Ditch Name: FERGUSON DITCH

Period of Use: MARCH 15 TO OCTOBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	56.00		SW	34	2S	2W	MADISON
2	44.00		SE	34	2S	2W	MADISON
3	10.00		E2NW	34	2S	2W	MADISON
4	89.00		NE	34	2S	2W	MADISON
5	8.00		N2SE	34	2S	2W	MADISON

Total: 207.00